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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th April 2005

No. 3868-li/1(B)-30/2005-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th March 2005 in Industrial Dispute Case No.157 of 1998 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of O. U. A. T., Bhubaneswar and its workman Shri Khageswar Samal was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 157 OF 1998

Dated the 30th March 2005

Present :

Shri P. K. Sahoo, o. s. j. s. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The Management of .. First Party—Management
O. U. A. T., Bhubaneswar.

And

Their Workman .. Second Party—Workman
Shri Khageswar Samal

Appearances :

For the First Party—Management .. Shri S. Samantaray

For the Second Party—Workman himself .. Shri K. Samal

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, have referred the matter in dispute to this Court in the Labour & Employment Department Memo. No. 12095(9)-L. E., dated the 29th October 1998 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :–

“ Whether the action of the management of Orissa University of Agriculture & Technology, Bhubaneswar in terminating the services of Shri Khageswar Samal, Bus Helper with effect from the 24th January 1998 is legal and/or justified ? If not, what relief Shri Samal is entitled to ?”

3. Stating in a little detail, the case of the workman Shri Khageswar Samal is that he was engaged as Bus Helper in the College of Engineering and Technology, a department under the management of Orissa University of Agriculture and Technology, Bhubaneswar (in short the management) with effect from the 1st November 1990 without any break in service in a vacant post of Bus Helper. Subsequently the vacant post was filled up by the management and one Shri Krupasindhu Mangaraj was appointed as Bus Helper in the said vacant post with effect from the 23rd October 1997 after facing an interview conducted by the management. The workman was not eligible to attend the interview since he had not completed seven years of service as per the directives of the Board of Management. After such engagement, the services of the workman were terminated with effect from the 24th January 1998. The workman had approached the labour machinery but to no effect. The conciliation proceeding initiated by the Assistant Labour Officer, Bhubaneswar ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. According to the workman, he had rendered continuous uninterrupted service since the date of joining till the date of his termination with much sincerity, devotion and to the utmost satisfaction of the management, but the management illegally terminated him from service without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). The workman while challenging the legality and justifiability of the action of the management in terminating his service with effect from the 24th January 1998 has now prayed for his reinstatement in service with back wages and other service benefits. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman. While admitting the engagement of the workman with effect from the 1st November 1990, the management had categorically averred in its written statement that after joining of one Shri Krupasindhu Mangaraj with effect from the 23rd October 1997 in the vacant post of Bus Helper as a regular manner, the services of the workman were terminated with effect from the 23rd October 1997. Therefore there was no question of reinstatement of the workman and the management was not under the obligation to comply with the provisions of Section 25-F of the Act. According to the management, since the post of Bus Helper has already been filled up, the workman is not entitled to the relief as prayed for.

On the above backgrounds, the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. Basing on the above pleadings of the parties, the following issues have been framed :-

ISSUES

- (i) Whether the action of the management of Orissa University of Agriculture & Technology, Bhubaneswar in terminating the services of Shri Khageswar Samal, Bus Helper with effect from the 24th January 1998 is legal and/or justified ?
- (ii) If not, what relief Shri Samal is entitled to ?

6. The workman in support of his case has examined himself as W. W. 1 and has relied upon the xerox copies of the documents such as experience certificate issued by the Department, College of Engineering and Technology, O. U. A. T., Bhubaneswar, Office Order, dated the 24th April 1997, interview call letter, dated the 9th August 1996 and attendance register marked as Exts. 1 to 4 respectively. On the other hand, the management has examined one Shri Bansidhar Ojha, Senior Assistant, O. U. A. T., Bhubaneswar as M. W. 1, but has not relied upon any document in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

The perusal of the evidence of the workman (W. W. 1) clearly emerges that he was working under the management as Bus Helper with effect from the 1st November 1990 and continued to work till the appointment of regular Bus Helper namely, Shri Krupasindhu Mangaraj. Even after appointment of Shri Mangaraj, he was allowed to work as Helper by the management for some days and he in fact had worked from October 1997 to January 1998 and was also signing in the attendance register. Subsequently the management terminated his service and while terminating his service, the management had not given any notice or notice pay and retrenchment compensation. Nothing material and substantial has been eliminated by the management during cross-examination so as to discard the evidence of the workman. During evidence, the workman has proved certain documents already relied upon by him such as, experience certificate, office order, dated the 24th January 1997, interview call letter and attendance register marked as Exts. 1 to 4 respectively. The above proved documents relied upon by the workman have nowhere been challenged by the management during evidence. On the other hand, the evidence led by the management through M. W. 1, Shri Bansidhar Ojha already goes to show that the workman was working under the management since the 1st November 1990 but he was disengaged by the management with effect from the 23rd October 1997 after the appointment of a regular candidate. During cross-examination, he admit that the workman was working under the management continuously with effect from the 1st November 1990 to the 22nd October 1997 and with regard to his engagement the Dean, College of Engineering and Technology of O. U. A. T., Bhubaneswar,

had issued a certificate to him indicating his engagement with effect from the 1st November 1990 against the vacant post of Bus Helper as N. M. R. till the appointment of regular candidate. He further admits that the management had not given any notice or notice pay and retrenchment compensation to the workman while terminating his services with effect from the 24th January 1998. Even the management had neither paid the legal dues to the workman nor offered the same to him. It is also in his evidence that the junior employees to the workman are still continuing in their respective services under the management.

8. Both the management and the workman have adduced evidence in support of their respective cases. After carefully examining the evidence already led by the parties, it is clearly evident that the workman had rendered continuous uninterrupted service since the 1st November 1990 till he was terminated from service by the management. It is undisputed between the parties that the management while terminating the services of the workman had not given any notice or notice pay and retrenchment compensation and the workman had worked continuously since the date of his joining till the appointment of a regular candidate. It is therefore crystal clear that the workman had completed 240 days of continuous service in terms of the statutory provision and the fact with regard to the continuous service for about seven years having been rendered by the workman in the establishment of the management has nowhere been disputed and challenged by the management. The workman in this respect has successfully proved and established that he had worked for more than 240 days as a regular employee but the management illegally terminated him from service without giving any prior notice or notice pay and retrenchment compensation, which in my view, are in complete violation of the mandatory provisions of Section 25-F of the Act. Therefore the termination having been made in violation of the mandatory provisions in Section 25-F of the Act is void *ab initio*.

9. Law is well settled that under Section 25-F of the Act, a workman is entitled to one month's notice before retrenchment or one month's pay in lieu thereof. Such notice or payment in lieu thereof is a condition precedent for effecting retrenchment. Compliance of Section 25-F of the Act is must, otherwise, the order of termination became null and void. Therefore Section 25-F of the Act being a beneficial legislation, it has to be strictly complied with and is a mandatory pre-condition. In the present case at hand, it is seen that such condition precedent has not been followed by the management while terminating the services of the workman. The Hon'ble Apex Court in the case of Karnataka State Road Transport Corporation *Vrs. M. Boraiah* reported in A. I. R. 1983 (Supreme Court) 1320, *Gamon India Ltd. Vrs. Niranjan Das* reported in 1984 (48) A. I. R. 310 and workman *Vrs. Food Corporation of India* reported in A. I. R. 1985 (Supreme Court) 670 has consistently taken the view that "the provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*". After carefully examining the evidence on record, the documents already relied upon by the workman and keeping in view the settled position of law, I am of the considered view that the action of the management in terminating the services of the workman with effect from the 24th January 1998 was illegal, unjustified and against the mandate of Section 25-F of the Act. In that view of the matter, the workman is entitled to the relief of reinstatement.

10. The perusal of the schedule of reference clearly reveals that the services of the workman have been terminated with effect from the 24th January 1998 and in the meantime about seven years have already been passed. Nowhere it has been proved and established by the management that the workman has been gainfully employed elsewhere with effect from the date of his termination. In such view of the matter, the workman is entitled to be reinstated in service but on the facts and circumstances of the present case, as the workman had not worked with effect from the date of his termination, he is entitled to get a lump sum compensation to the tune of Rs. 4,000 in lieu of back wages which, in my opinion, would meet the ends of justice in the instant case. Both the above issues are answered accordingly.

11. Hence it is ordered.

ORDER

That the action of the management of Orissa University of Agriculture and Technology, Bhubaneswar in terminating the services of Shri Khageswar Samal, Bus Helper with effect from the 24th January 1998 is neither legal nor justified. The workman Shri Samal is entitled to be reinstated in service with a lump sum compensation of Rs. 4,000 (rupees four thousand) only in lieu of back wages.

The reference is thus answered accordingly.

Dictated and corrected by me

P. K. SAHOO

30-3-2005

Presiding Officer

Labour Court, Bhubaneswar

P. K. SAHOO

30-3-2005

Presiding Officer

Labour Court, Bhubaneswar

By order of the Governor

D. MISHRA

Under-Secretary to Government